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May 4, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 4, 2005

Case Number: TSO-0295

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ A local DOE Security Office (LSO) suspended the individual’s access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual’s access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual’s access authorization should be restored.

I. Background

The individual has held a DOE security clearance for many years while employed in positions that have required her to maintain a security clearance. On September 23, 2004, the police arrested the individual and charged her with “Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs (DUI).” After the individual reported her arrest to the DOE, the DOE conducted a Personnel Security Interview with the individual in October 2004 to obtain information regarding the circumstances surrounding the arrest and the extent of the individual’s alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for an agency-sponsored psychiatric evaluation. The DOE consultant-psychiatrist examined the individual in February 2005, and memorialized his findings in a report dated March 16, 2005 (Psychiatric Report or Exhibit 13). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse, a mental illness which, in the DOE consultant-psychiatrist’s opinion, may cause significant defects in the individual’s judgment or reliability in the future. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that the individual had shown adequate evidence of rehabilitation or reformation from her alcohol abuse.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In September 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that her access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of four potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h, j and l (Criteria F, H, J, and L respectively).²

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations and requested an administrative review hearing. On October 6, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case in accordance with the Part 710 regulations.

At the hearing, 11 witnesses testified. The LSO called one witness, the DOE consultant-psychiatrist, and the individual presented her own testimony and that of nine other witnesses: two psychiatrists, an Employee Assistance Counselor (EAP Counselor), her “significant other,” her alcohol treatment center counselor, her Alcoholics Anonymous (AA) sponsor, a friend, a current supervisor, and a former supervisor. In addition to the testimonial evidence, the LSO submitted 36 exhibits into the record; the individual tendered 26 exhibits.³ I closed the record in this case on April 10, 2006 when I received the individual’s final post-hearing submissions.

² Criterion F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30.” 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion L relates, in relevant part, to information that a person has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . .” 10 C.F.R. § 710.8(l).

³ On February 10, 2006, Counsel for the DOE filed a Motion to Strike certain portions of the individual’s Counsel’s Closing Argument and post-hearing submissions tendered in this case. On April 12, 2006, I issued an Interlocutory Order (Case No. TSZ-0295) in which I granted in part and denied in part the subject motion. Specifically, I struck from the record in this case one of the individual’s post-hearing submissions, Exhibit W, portions of Exhibits R, U, V, and Section II.A.3 of the individual’s closing argument. See *Personnel Security Hearing*, Case No. TSZ-0295, <http://www.oha.doe.gov/cases/security/tsz-0295.pdf>.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites four potentially disqualifying criteria as bases for suspending the individual's security clearance, *i.e.*, Criteria F, H, J and L.

With respect to Criterion F, the LSO questions the individual's candor because she: (1) failed to reveal a 1983 alcohol-related arrest on a security form that she completed in 1987, and (2) provided differing information to the DOE consultant-psychiatrist and the personnel security specialist regarding her consumption of alcohol following her arrest in 1993 for Driving Under the Influence (DUI). From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and

trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). In addition, a person's deliberate falsification raises a security concern that he or she might be susceptible to coercion, pressure, exploitation, or duress arising from the fear that others might learn of the information being concealed. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

The Criterion H allegations at issue are based solely on the opinion of the DOE consultant-psychiatrist that the individual suffers from alcohol abuse, a mental illness which, according to the DOE consultant-psychiatrist causes, or may cause, a significant defect in the individual's judgment or reliability. From a security perspective, a mental illness or condition may cause a significant defect in a person's psychological, social and occupational functioning and could raise questions about the person's judgment, reliability and stability. *See generally*, Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27.

As for Criterion J, the LSO relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse in 2005. Second, the individual admitted to the DOE consultant-psychiatrist in 2005 that she is an alcoholic. Third, the individual told the personnel security specialist during the 2004 PSI that she was drinking too much and wanted to get help but did not know how. Fourth, the individual has had three alcohol-related arrests in a 21-year period, one in 1983 for Driving While Intoxicated (DWI), one in 1993 for DUI, and one in 2004 for Aggravated DUI. The information set forth above clearly raises questions about the individual's alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.*

Lastly, the LSO cites Criterion L as a security concern based on following information. The LSO first points out that the individual signed and dated security acknowledgements in 1977 and 1987 in which she certified that she would report all arrests to the DOE as soon as practicable. Despite having executed these two security acknowledgments, the individual failed to report her 1983 DWI to the DOE and reported her 1993 DUI seven months late. The LSO contends that the individual's conduct in this regard shows a pattern of dishonesty and/or lack of reliability. Finally, the LSO states that the individual told the EAP Counselor in October 2004 that her 2004 DUI was her second alcohol-related arrest, when in fact it was her third such arrest.

IV. Findings of Fact

Most of the facts in this case are uncontested. Where there are discrepancies in the record, I will note them as appropriate.

Between 1983 and 2004, the individual has been arrested three times for alcohol-related offenses. The individual's first arrest occurred in November 1983 when the police arrested her and charged her with DWI. Ex. 8. The individual pled "no contest" to the charge. *Id.*; Ex. 36 at 33.

The individual's second arrest occurred in December 1993 when she was charged with DUI. Ex. 19. The individual pled guilty to the charge and received a 90-day suspended sentence for the offense. Ex. 36 at 64-65; Ex. 33. The court placed the individual on one year probation and ordered her to (1) perform 40 hours of community service, and (2) attend an alcohol treatment program. Ex. 33. The individual fulfilled the terms of the latter part of her sentence by attending AA for a one-year period. Ex. 13 at 15.

The individual's third and most recent arrest occurred on September 23, 2004. On the evening in question, the individual's boss suggested that the individual and her co-workers accompany him to a local restaurant for alcoholic beverages. Ex. 34 at 19. After consuming one beer and one large margarita on an empty stomach, the individual left the restaurant and began to drive home. *Id.* at 23. Enroute home, the individual's vehicle almost hit a police car from behind. Ex. 31. A police officer stopped the individual's vehicle and then observed that the individual had bloodshot, watery eyes, slurred speech and an odor of alcohol. *Id.* The police officer administered a field sobriety test to the individual which she failed. *Id.* A subsequent breath alcohol content test (BAC) administered to the individual yielded a result of .16. *Id.* The individual was arrested and charged with Aggravated DWI. *Id.* The individual pled guilty to Aggravated DWI and was sentenced to: (1) 90 days in jail, 88 days of which was suspended, (2) unsupervised probation for 364 days, contingent upon her (a) completion of an alcohol treatment program, (b) attendance at DWI school, (c) attendance at a victim impact and drug and alcohol prevention class, (d) her abstention from alcohol and (e) her refraining from frequenting places where alcohol is sold. Ex. 27. In addition, the Department of Motor Vehicles (DMV) required the individual to install an "ignition interlock device" on her vehicle. Ex. 27. The individual fulfilled all the requirements of her unsupervised probation and the mandate of the DMV. Exhibits B, C, E, F, G, H.

According to the record, the individual did not report her 1983 DWI arrest to the DOE in a timely manner even though she held a security clearance at the time of the arrest. She also failed to list the 1983 DWI on her 1987 security form, although she did list the 1983 DWI on her 1992 security form. As for the 1993 DUI, the individual reported that alcohol-related arrest to the DOE seven months late. In 1994, the LSO favorably resolved the security concerns associated with the individual's reporting irregularities. Ex. 3, 4 and 8.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been

guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁴ After due deliberation, I have determined that the individual's access authorization should be restored. I find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

According to the LSO, the individual provided false or misleading information regarding her past alcohol-related legal incidents and drinking pattern in three separate venues: during the 2004 PSI, during the 2005 psychiatric examination and on her 1987 Personnel Security Questionnaire (PSQ). I will first address the inconsistent responses that the individual gave the DOE consultant-psychiatrist and the personnel security specialist regarding the dates of her abstention following her 1993 alcohol-related arrest.

During the 2004 PSI, the individual told the Personnel Security Specialist that she had abstained from alcohol for approximately 10 years following her 1993 DUI arrest. Ex. 35 at 51. In contrast, during her 2005 psychiatric interview the individual told the DOE consultant-psychiatrist that she had consumed an alcoholic beverage in 1997. Ex. 13 at 28. At the hearing, the individual testified that she was in denial about the extent of her alcohol problem during the 2004 PSI and the 2005 psychiatric interview. Tr. at 131. The DOE consultant-psychiatrist also attributed the individual's inconsistent responses to minimization, explaining that persons with active substance use disorders often minimize their alcohol use. *Id.* at 26, 29. The EAP Counselor who has met weekly with the individual since October 2004 offered another explanation for the individual's inconsistent responses. He testified that based on his observation and treatment of the individual over a 14-month period, he believes that the individual has difficulty understanding questions posed to her. *Id.* at 209. For this reason, explained the EAP Counselor, he frequently needed to rephrase and repeat questions in their counseling sessions because of confusion on the individual's part. *Id.*

After carefully considering all the testimonial evidence on the issue before me, I find that the individual has mitigated the Criterion F concern associated with her conflicting responses at issue. I find that the individual's denial and difficulty understanding questions posed to her explain why the individual provided inconsistent responses regarding her post-1993 alcohol usage. The DOE consultant-psychiatrist convinced me that the inconsistent responses at issue were an outgrowth of the individual's alcohol illness. As will be discussed in Section B below, the individual has (1) undergone extensive alcohol treatment, (2) now acknowledges that she has a problem with alcohol, and (3) no longer minimizes the gravity of her alcohol-related offenses. The cumulative testimony of the DOE consultant-psychiatrist and two other board-certified psychiatrists convince me that the individual's inconsistent responses were caused, in whole or in part,

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

by her alcohol abuse, a condition that she is now addressing. I also find that the individual's inconsistent responses may be attributable, in part, to her difficulty understanding questions posed to her, as the EAP Counselor opined. At the hearing, I observed the difficulty the individual had at the hearing processing some of the questions asked of her. In the end, all of the factors discussed above mitigate the security concerns associated with the individual's inconsistent responses to the personnel security specialist and the DOE consultant-psychiatrist.

As for the individual's omission on her 1987 QSP of the 1983 DUI arrest, I find that the individual has mitigated the security concern associated with this matter as well. First, it appears from the record that the individual's omission in question was inadvertent, not deliberate.⁵ Ex. 36 at 39, 46. Second, the individual provided documentary evidence to show that before completing her 1992 QSP, she contacted various authorities in an attempt to determine whether she had been arrested or detained by police in 1983. Ex. L. Based on the results of that research, the individual voluntarily reported the arrest when she completed her security form in 1992. Ex. 22. It has been 19 years since the individual omitted the arrest on her security form and 14 years since the individual reported the subject arrest in writing to the DOE. All of these factors, in my opinion, mitigate the adverse inference associated with the individual's failure to report her 1983 arrest in 1987.

Based on all the foregoing, I find that the individual has brought forward convincing testimonial evidence to mitigate all the Criterion F charges at issue.

B. Criteria H and J

Prior to the hearing, the parties stipulated that the individual suffered from alcohol abuse (Tr. at 10) so the hearing focused entirely on the individual's efforts at reformation and rehabilitation from her alcohol abuse. As a starting point of analysis, I will discuss the DOE consultant-psychiatrist's opinion of what constitutes adequate evidence of rehabilitation or reformation in this case.

In his Psychiatric Report, the DOE consultant-psychiatrist set forth the length of time and type of treatment that he would consider as adequate evidence of rehabilitation or reformation from alcohol abuse. Ex. 13 at 46. As adequate evidence of rehabilitation, the DOE consultant-psychiatrist suggested one of the following programs to the individual:

- (1) Documented evidence of attendance at AA with a sponsor and working on the 12 steps at least once a week for a minimum of 100 hours over at least one year and abstinence from alcohol and all non-prescribed controlled substances for a minimum of two years, or
- (2) Satisfactory completion of a professionally run alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and

⁵ In 1994, the LSO discussed the individual's failure to list her 1983 arrest on the 1987 form and the LSO concluded that the individual's omission was an oversight on her part. Ex. 8.

abstinence from alcohol and all non-prescribed controlled substances for a minimum of three years.

Id. As adequate evidence of reformation, the DOE consultant-psychiatrist posited the following two options:

- (1) Two or three years of abstinence from alcohol and all non-prescribed controlled substances if the individual goes through one of the two rehabilitation programs set forth above, or
- (2) Ten years of abstinence from alcohol and all non-prescribed controlled substances if the individual does not go through one of the two rehabilitation programs set forth above.

Id. At the hearing, the DOE consultant-psychiatrist reaffirmed his views of these matters. Tr. at 30-31. I now turn to the evidence that the individual presented regarding her rehabilitative efforts to date.

1. Individual's Testimony and Supporting Documentary Evidence

The individual testified at the hearing and provided corroborating documentation that her rehabilitation efforts to date have included the following: (1) complete sobriety since September 2004, (2) attendance at AA three to four times each week since October 2004; (3) meeting with her AA sponsor for two to three hours one time each week and checking in with her AA sponsor three times each week; (4) completion of an intensive 72-hour outpatient alcohol program over a two-month period; (5) regular meetings with a licensed substance abuse counselor as part of an aftercare program from June 2005 until the present; (6) monthly counseling sessions with an EAP Counselor at her place of employment since October 2004; (7) monthly counseling sessions with a board-certified psychiatrist at her place of employment since May 2005; and (8) four sessions with a second board-certified psychiatrist for evaluation purposes. *Id.* at 140-152; Exhibits B, C, N, Q, X, AA, BB.

The individual related at the hearing that she intends to remain in AA for the rest of her life and intends never to drink alcohol again. Tr. at 138-139. When asked at the hearing why she did not learn from the AA sessions that she attended in 1993 for a one-year period, the individual responded that in 1993 she went to the AA meetings and listened only. Tr. at 159. The individual explained that "you must work the program to get anything out of it," and now she is working the program intensely. *Id.*

In a post-hearing submission, the individual added she will continue counseling sessions with her aftercare counselor until September 2006 and will continue meeting weekly with the EAP Counselor and monthly with the board-certified psychiatrist at her place of employment for as long as they are willing to work with her. Ex. R at 2.

The individual testified that she has an extensive network of support to help her cope with stressors in her life and to resist the urge to drink alcohol. Tr. at 148. Specifically, she stated that she relies on her faith in God, her AA sponsor, her EAP Counselor, her aftercare counselor and other AA members. *Id.* When asked how she would address a

situation where her supervisor invites all his subordinates for alcoholic beverages in the future, the individual stated without hesitation that she would refuse and then relate: "I'm a recovering alcoholic." *Id.* at 164. The individual added that she has changed her ways in that she no longer goes out with peers after work. *Id.* at 186. Instead, she goes immediately home to be with her 11-year old son. *Id.* The individual also stated that she has no alcohol in her home. *Id.* at 185. In addition, the individual testified that she decided to keep the ignition interlock device on her car after the court-ordered period for having that device on her car expired. *Id.* at 154. She submitted into evidence the negative test results recorded on the ignition interlock device for the period December 2004 through March 2006. Exhibits H and CC.

2. Treatment Center Counselor's Testimony

The Treatment Center Counselor is a certified addiction counselor with 24 years experience in her field. *Tr.* at 257. She confirmed the individual completed a two-month intensive alcohol treatment program in August 2005 and has participated weekly in aftercare meetings since August 2005. According to the Treatment Center Counselor, the rehabilitation program is very thorough. *Id.* at 263. The goal of the program, stated the Treatment Center Counselor, is abstinence. *Id.* at 264. The program helps its clients to build a solid support system, recognize triggers, address minimization and denial, gain insight and awareness of relapse prevention, and develop coping skills to prevent relapse. *Id.* at 258, 265. The Treatment Center Counselor testified that the individual is very cooperative in the program and actively participates in it. *Id.* at 260. She opined that the individual is a very sincere person, adding that she works mainly with addicts and has done so for so long that she has a good way of measuring a person's sincerity. *Id.* at 262.

She further opined that the individual "has the willpower to stick to the program and remain abstinent." *Id.* at 264.

3. EAP Counselor's Testimony

The EAP Counselor has worked in his position for a DOE contractor for 20 years. *Id.* at 194-195. He confirmed at the hearing that he has provided counseling to the individual on a weekly basis since October 2004. *Id.* at 196; Ex. U. The EAP Counselor opined that the individual is "extremely motivated and has been diligent in pursuing" her course of treatment. *Id.* at 199-200. He explained that a person who abuses alcohol, in contrast to a person who is alcohol-dependent, drinks by choice. *Id.* at 204. For this reason, alcohol abusers still have the capacity to learn from the consequences of their behavior. *Id.* Part of the counseling that the EAP Counselor provides to the individual is designed to help her make good choices. *Id.* at 205. Based on his extensive work with the individual for more than one year, the EAP Counselor opined that the individual is equipped to "carry through on her sobriety commitment." *Id.* at 212. Finally, the EAP Counselor stated that in his opinion the individual's risk of relapse is minimal, given her current state and what she has done to rehabilitate herself from her alcohol abuse. *Id.* at 214.

4. Psychiatrist #1's Testimony

Psychiatrist #1 has been board-certified in psychiatry for more than 25 years and has specialty training in substance abuse, alcohol abuse and forensic matters. *Id.* at 49-50. He

was also involved in the preparation of the third edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-III). *Id.* at 52. He testified that he evaluated the individual four times before the hearing. *Id.* at 56. According to Psychiatrist #1, he did not find any denial or minimization on the individual's part with regard to her alcohol abuse in his evaluations. *Id.* at 61. Psychiatrist #1 opined that the individual is working in her AA program sincerely and that she realizes she has a "lifetime illness which will require participation in [AA]." *Id.* He pointed out that the individual participates actively in AA. *Id.* at 62. Psychiatrist #1 opined that the individual's rehabilitation program is extensive and impressive. *Id.* at 70. She is actively involved in AA, has an AA sponsor, and receives counseling from the EAP Counselor and another psychiatrist. *Id.* at 85. In addition, Psychiatrist #1 opined that, beyond a reasonable degree of medical certainty, the individual's rehabilitation program has been successful. He concluded that the individual is sincere in her commitment to stay in treatment and remain sober for the rest of her life. *Id.* at 68. All of these factors, combined with the fact that the individual has an established support system, both person and professional, caused Psychiatrist #1 to opine that the individual will maintain her sobriety. *Id.* at 64, 87.

5. Psychiatrist #2's Testimony

Psychiatrist #2 is a board-certified psychiatrist and the Medical Director of a hospital. *Id.* at 219. He testified that he has treated the individual on a monthly basis since May 2005 upon the referral of the EAP Counselor. *Id.* at 220. The purpose of his first consultation with the individual was to evaluate her symptoms of anxiety and depression that developed after she met with the DOE consultant-psychiatrist. *Id.* at 221. Psychiatrist #2 testified that the individual has demonstrated in their therapy sessions a sincere intent to reform and to commit herself to long-term sobriety. *Id.* at 222. He opined that he has a "deeper and more profound appreciation and understanding of the individual's character" than does the DOE consultant-psychiatrist. *Id.* at 228. He stated that he has observed the individual mature and grow over the course of their therapy sessions. *Id.* at 226. He added that the individual's sincerity is "evident and overwhelming" from his professional point of view. *Id.* Psychiatrist #2 disagreed with the DOE consultant-psychiatrist's opinion regarding reformation and rehabilitation in this case, stating that he finds the DOE consultant-psychiatrist's recommendations to be excessive. *Id.* at 223. He concluded by opining that the individual's risk of relapse is less than 10% given her rehabilitation history and the tremendous support network that she enjoys at home, in the workplace, and in therapy. *Id.* at 227.

6. The AA Sponsor's Testimony

The individual's AA sponsor has sponsored the individual for six months. *Id.* at 292. Prior to that time, the individual had a temporary sponsor. *Id.* The AA sponsor testified that she meets every Sunday with the individual for two to two and one-half hours and during that time they read the *Big Book of Alcoholics Anonymous* word-for-word. *Id.* She added that the Sunday study sessions also allow the opportunity to discuss life issues. *Id.* at 293. The AA sponsor also requires the individual to call her two to three times each week to "check-in." *Id.* As for the date of the hearing, the individual was working on Step 4 of the 12 step program. In a post-hearing submission, the AA sponsor related that the

individual is making excellent progress on her AA steps. Ex. V. She further explained that it is not necessary to finish each step quickly. *Id.* Rather, what is important is the depth of conviction that the individual has shown in putting each step into her rehabilitation program. *Id.* According to the AA sponsor, the individual is a believer in the 12 step program and is very committed to her rehabilitation. *Id.* The AA sponsor stated that the individual will spend her entire life in AA now that she “has come to grips with her [alcohol] problem.” Tr. at 295. The AA Sponsor testified that the individual is cooperative, open and honest in their sessions. *Id.* at 292, 294. She stated that the individual is “one of the most committed AA members that I have seen. She is rehabilitated and I believe she will continue her rehabilitation program for her lifetime.”⁶ Ex. V.

7. The “Significant Other’s” Testimony

The individual’s “significant other” has known the individual since 1988. Tr. at 95. They have a son together. *Id.* at 96. He sees the individual everyday even though they are not cohabiting. *Id.* The “significant other” testified that the individual enthusiastically embraces AA and counseling and is very active in those programs. *Id.* at 103. According to the “significant other,” the individual is very committed to maintaining her sobriety. *Id.* at 104. He related that the intensive outpatient program that the individual attended helped her enormously. *Id.* at 105. He has noticed a big change in her within the last year. *Id.* at 101. By way of example, he related that if someone offers the individual an alcoholic beverage, she will say, “no, I’ll have an ice tea.” *Id.* at 102. He confirmed that the individual has no alcohol in her house and that she no longer socializes with co-workers or supervisors after work. *Id.* at 111, 119. The “significant other” testified that he and his son support the individual in her recovery efforts by attending family night at the aftercare counseling program where the individual goes on a weekly basis. *Id.* at 106. When asked why he believes that the individual will maintain her sobriety given that she attended AA in 1993 for one year and then resumed drinking, the “significant other” testified that in 1993 she had no AA sponsor, no counseling, and no active participation in the program.

8. Friend’s Testimony

One of the individual’s friends testified that she socializes with the individual. *Id.* at 283. The individual has told the friend about the 2004 DUI and of her intention not to drink again. *Id.* at 284. The friend related that the individual’s 11-year old son “is her life” and that she is confident the individual will not drink again because the individual’s son is her incentive not to do so. *Id.* at 286.

9. Former Supervisor’s Testimony

The individual’s former supervisor testified that he is a member of AA and sees the individual three to five times each week at AA meetings. *Id.* at 304, 308. The former supervisor opined that, based on his observation of the individual at the meetings, the

⁶ When asked why she thought that the individual did not succeed in maintaining her sobriety in 1993 after attending one year in AA, the AA sponsor opined that the individual was in denial in 1993. *Id.* at 300.

individual is actively embracing and participating in the program. *Id.* at 305. He added that he knows that the individual accepts the impact that alcohol has had on her life. *Id.* He concluded his testimony by stating that “AA is not about learning not to take a drink, it’s learning to live life.” *Id.* at 310.

10. Hearing Officer Evaluation of Evidence

During the eight-hour hearing, I had ample opportunity to evaluate the demeanor of the individual, observe her manner and deportment, appraise the way in which she responded to questions, and assess her candor. Based on my observations, I find that the individual is a very earnest person who is sincerely committed to actively participating in AA and her counseling sessions, and to remaining abstinent for the rest of her life. Through her own testimony, that of her two psychiatrists, her EAP Counselor, her AA sponsor, her Treatment Counselor, her “significant other,” and her former supervisor/fellow AA member, the individual convinced me that she (1) has been abstinent for 19 months;⁷(2) has acknowledged and accepted that she has a problem with alcohol; (3) is totally committed to a lifetime of sobriety; (4) is actively participating in AA, her counseling sessions and her therapy; (5) has the willpower and the tools to remain abstinent; (6) will remain in AA for the rest of her life; (7) has a strong network of family, friends, and professionals who will assist her in maintaining her sobriety; and (8) has changed her lifestyle so that she no longer goes out after work with peers or supervisors for alcoholic beverages.

I am very impressed with the quality of the two-month intensive alcohol treatment program and the aftercare program that the individual has attended continuously since August 2004. The Treatment Center Counselor provided very probative testimony that persuaded me that the treatment program has succeeded in helping the individual build a solid support system, recognize triggers, address minimization and denial, gain insight and awareness of relapse prevention, and develop coping skills to prevent relapse.

I am equally impressed with the dedication and commitment that the individual has shown in her AA program. The AA sponsor’s testimony that the individual is “one of the most committed people that she’s seen” is quite compelling. The AA sponsor confirmed at the hearing that the individual spends two to three hours with her each Sunday reading the *Big Book of Alcoholics Anonymous* word-for-word, and calls her two to three times each week to “check-in.” Even though the individual is only on Step 4 of the 12-Step program, the AA sponsor convinced me that it is not the speed through which an AA member works the program, but the depth of conviction with which the person works each step. It is clear to me from the testimony of the individual and her sponsor that the individual is giving each AA step careful attention and devoting much energy to maximizing the benefit that she derives from each step. In addition to her individual work with her AA sponsor, the individual actively participates in AA three to five times each week. This fact is corroborated by the individual’s former supervisor who is also an AA member.

⁷ In a post-hearing Affidavit tendered on April 18, 2006, the individual attested that she has remained abstinent since September 2004, a period of 19 months.

In evaluating the individual's rehabilitation efforts to date, I find that she has far exceeded the DOE consultant-psychiatrist's suggestion that she attend 100 hours of AA over a one-year period, or an inpatient or outpatient alcohol treatment program for a minimum of six months. The individual, by my calculation, has spent at least 400 hours actively participating in AA and working individually with her sponsor. In addition, she has satisfactorily completed an outpatient professionally run program, and has continued in aftercare for 19 months. She has received counseling from the EAP Counselor on a weekly basis for 18 months, and therapy from a board-certified psychiatrist on a monthly basis for 11 months.

Ultimately, however, I must determine whether sufficient time has elapsed for me to gauge the likelihood that the individual will maintain her sobriety. On this issue, the DOE consultant-psychiatrist remained adamant at the hearing that the individual requires 24 months of sobriety in addition to being involved in a rehabilitation program for him to consider her adequately rehabilitated or reformed from her alcohol abuse. He opined that she has "too many people helping her;" and added, "it's almost too many cooks spoil the broth." Tr. at 315, 318. He also opined that her risk of relapse is not reduced because she has more people helping her. *Id.* at 315. After hearing all the testimony at the hearing, the DOE consultant-psychiatrist testified that he "is not 95% certain that the individual's risk of relapse over the next 10 years is 10% or less." *Id.* at 313. For this reason, the DOE consultant-psychiatrist does not believe the individual is rehabilitated from her alcohol abuse.

I have carefully considered the DOE consultant-psychiatrist's view in light of all the evidence and find that the individual does not need 24 months of sobriety to be considered rehabilitated. See *Personnel Security Hearing, Case No. TSO-0260* (2005), <http://www.oha.doe.gov/cases/security/tso0260.pdf> (Hearing Officer rejected DOE consultant psychiatrist's opinion that 24 months of sobriety in addition to evidence of rehabilitation was necessary to demonstrate adequate evidence of rehabilitation, finding instead that the person's very scrupulous and dedicated adherence to strict abstinence and an intense recovery program over an 18-month period was convincing evidence of adequate rehabilitation). In this case, the individual has brought forth extraordinarily compelling evidence of her dedicated adherence over a 19-month period to complete abstinence, an intense recovery program, an employer-sponsored EAP program, and a therapy regime with a psychiatrist. Moreover, I was more convinced by the testimony of other mental health professionals with regard to the adequacy of the individual's rehabilitative efforts than I was with the DOE consultant-psychiatrist's testimony on the same matter. Specifically, I believe that Psychiatrist #2 is correct that he has a deeper and more profound understanding of the individual's character than does the DOE consultant-psychiatrist, because he is providing therapy to the individual. *Id.* at 228. I also found that Psychiatrist #2 provided compelling reasons why he considers the individual's risk of relapse to be less than 10%, *i.e.*, the individual's rehabilitation history, her tremendous support network, and her successful therapy. In addition, I gave considerable weight to the following evidence: (1) Psychiatrist #1's testimony that "beyond a reasonable degree of medical certainty, the individual's rehabilitation program has been successful," (2) the EAP Counselor's testimony that the individual's risk of relapse is minimal, given her current state and what she has done to rehabilitate herself; and (3) the post-hearing sworn statement of the Treatment Center Counselor who averred that the individual is

rehabilitated and will continue in her rehabilitation program for her lifetime. In the end, the cumulative weight of the positive testaments from highly credentialed professionals outweighs the opinion of the DOE consultant-psychiatrist regarding what constitutes adequate evidence of rehabilitation in this case.

In the end, it is my common sense judgment that the individual has presented convincing evidence that she has successfully completed an intensive outpatient counseling program, along with the required aftercare component of the program, has demonstrated a clear and established pattern of abstinence for a 19 month period, has received a favorable prognosis by two board-certified psychiatrists, a licensed treatment counselor who is a staff member of a recognized alcohol treatment program, and an EAP Counselor, and has presented compelling testimony that she will continue in AA and remain abstinent for the rest of her life. All these factors convince me that the individual is adequately rehabilitated from her alcohol abuse, and outweigh the negative implications associated with the individual's past inability to address her alcohol issues adequately.

Based on the evidence before me, I find that the individual is rehabilitated from her alcohol abuse. Accordingly, I find that the individual has mitigated the Criteria J and H security concerns at issue.

C. Criterion L

The LSO also questions the individual's honesty, trustworthiness and reliability because the individual allegedly (1) failed to report her 1983 DWI to the DOE, (2) reported her 1993 DWI to the DOE seven months late, and (3) lied to the EAP Counselor about the extent of her alcohol-related problems.

Several factors mitigate the adverse inferences arising from the three matters at hand. First, while it is true that the individual did not report her 1983 arrest to the DOE "as soon as practicable" as required by the security acknowledgement that she signed in 1977, the individual did reveal the arrest on her 1992 security form. Second, the individual testified convincingly that her failure to promptly report her 1983 DWI was based on a misunderstanding on her part regarding the nature of the alcohol-related incident. Tr. at 134-135.

With regard to the late reporting of her 1993 DWI, the individual testified that she promptly reported that arrest to her supervisor within five days of its occurrence. *Id.* at 136. The individual's testimony in this regard is consistent with the statements that she provided in 1994 during a PSI. Ex. 36 at 50. In the 1994 PSI, the individual told the personnel security that she had reported the incident to her supervisor who advised her to wait until the matter went to court before reporting the matter in writing. *Id.* at 50-54. During the 1994 PSI, the individual provided the personnel security specialist with the name of the supervisor who allegedly told the individual this information. *Id.* at 54. The LSO was apparently convinced of the individual's explanations of this incident in 1994 because it decided that the individual had mitigated the late reporting of the 1993 DWI. After listening to the individual testify at the hearing, I find her explanation for her late reporting to be credible. In addition to the individual's compelling testimony on this matter, two other witnesses provided information on the late reporting. The individual's

“significant other” corroborated the individual’s statement that she promptly notified her supervisor of the 1993 DWI and relied on his direction that she wait until the disposition of the case to report the incident in writing. Tr. at 98. The “significant other” pointed to Exhibit M which shows that the individual reported the 1993 DWI seven days after the court disposed of the case. Ex. M. The “significant other” related that the individual did what her supervisor told her to do. Tr. at 98. Psychiatrist #1 testified that he attributed the individual’s tardy reporting to her reliance on the advice of her supervisor. *Id.* at 69. In deciding whether the individual’s misplaced reliance on the advice of her supervisor should mitigate her reporting responsibilities as outlined in the security acknowledgement signed by the individual 1987, I reflected on the individual’s attorney’s description of his client as “a straightforward, simple person, in the best meaning of those terms.” *Id.* at 21. In the end, it is my common sense judgment that the individual simply did as she was told and never considered that the instructions her supervisor gave her were in conflict with those set forth in the 1987 security acknowledgement. Further, the record reflects that the individual promptly reported her 2004 alcohol-related arrest to the DOE, a fact that shows me that she learned from her error in 1993 and complied with her reporting responsibilities when they next arose.

Finally, as for the seemingly inaccurate information that the individual provided to the EAP Counselor, I carefully evaluated the testimonial evidence supplied by the EAP Counselor on this matter. The EAP Counselor testified during his first interview with the individual she was very upset. Tr. at 197. He stated that while the individual did not inform him of the third DWI in his first interview with her, she voluntarily reported that third DWI to him in a subsequent interview. *Id.* at 198. The EAP Counselor testified that from his perspective, there was “some question as to whether or not they actually removed that [the 1983 DWI] from the record . . .” *Id.* The EAP Counselor then shared his view that the individual was not being deceitful with him in their first meeting regarding this matter. *Id.* I found the EAP Counselor’s testimony to be very candid and convincing. For this reason, I find that the individual did not lie to the EAP Counselor.

Based on all the foregoing, I find that the individual has mitigated all the security concerns associated with the Criterion L allegations set for in the Notification Letter.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F, J, H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Criteria F, J, H, and L. I therefore find that restoring the individual’s access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should be

restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: May 4, 2006